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June 13, 1997

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FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

Via Facsimile  
202-225-1389

The Hon. Constance Morella  
United States House  
of Representatives  
Washington, D. C.

DOCKET FILE COPY ORIGINAL

Dear Congresswoman Morella:

My wife, Susan, and I are residents of Maryland, in my case since 1958, in her case, lifelong. We reside at 9312 Wooden Bridge Road in Potomac, Maryland, telephone 301-340-9424. We are writing concerning the matter of raising federal funds by the auction of broadcast frequencies that is currently before the Communications Committee headed by Senator McCain.

This letter relates to unfair, retroactive use of auctions to assign 20 or fewer FCC radio licenses that would wipe out many years of litigation efforts by a small number of citizens, resulting in no appreciable impact on federal revenues. This letter does not relate to nationwide auctioning of TV spectrum to be replaced by digital television frequencies, auctioning radio and television licenses in several hundred pending cases which have never been set for hearing, or any such cases that arise in the future.

An example of the 20 or fewer "old" broadcast licensing cases is that for a new FM station licensed to the community of Selbyville, Delaware, and serving the nearby Ocean City, Maryland area, for which Susan Bechtel and others filed competing applications nearly eleven years ago in September 1986. Hearings and related litigation continued until 1994, when the case was frozen until the FCC revised its comparative standards under court order.<sup>1</sup> That freeze remains in effect more than three

<sup>1</sup> Susan M. Bechtel v. FCC (I), 957 F.2d 873 (D.C.Cir. 1992) (remanding the case to the FCC to consider and act on Mrs. Bechtel's argument that the Commission's comparative hearing standards dating back to 1965 were unlawful in that new owners

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Page two

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Enclosed is a letter to the FCC from Senator John McCain asking the Commission to withhold action on revised comparative policies pending consideration of auction legislation. The Senate Communications Subcommittee staff advise that the bill (presumably sponsored by Sen. McCain) will be introduced shortly providing for auctions of all broadcast license cases, including the small handful of 20 or fewer "old" litigation cases illustrated by the Selbyville-Ocean City proceeding. These actions appear to have dissuaded the FCC from adopting revised comparative policies or even from considering settlements to resolve "old" cases without further litigation.

The interests of the nation and its citizens will be served by the following:

1. A communication from Senator McCain to the FCC encouraging the agency to develop revised policies if only for the limited purpose of activating the small number of "old" litigation cases and to aggressively initiate and approve settlements of those cases.<sup>2</sup> The cutoff date could be only those few broadcast licensing cases that were designated for hearing prior to January 1, 1997 or other suitable current date.<sup>3</sup>

2. Application of the auction mechanism (if that is the

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were required to manage their stations in a "mom and pop" fashion and could not hire management under their ownership supervision in a "corporate America" fashion); Susan M. Bechtel v. FCC (II), 10 F.3d 875 (D.C.Cir. 1993) (holding such requirement to be arbitrary and capricious and remanding the case to the FCC to revise its comparative standards in that regard).

<sup>2</sup> We are not asking for any communication by Sen. McCain to the FCC addressing the specific merits of the Selbyville-Ocean City comparative proceeding, which is "restricted" and subject to "ex parte" rules.

<sup>3</sup> On the House side, Representative Tauzin, Senator McCain's counterpart, has introduced auction legislation with an even more liberal cutoff date, i.e., applications that were accepted for filing prior to the enactment of the bill into law.

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Page three

will of Congress and the administration) to broadcast licensing cases which have not been designated for hearing by the current date suggested in (1) above, and to all broadcast licensing cases arising in the future.

Item (1) will serve to clear out 20 or fewer old cases, on the merits under revised standards or by settlement, in fairness to the citizens who are parties, without losing any significant amount of auction revenues for the Treasury. Item (2) will apply auctions to several hundred pending licensing cases not yet designated for hearing, plus new cases arising in the future, causing no substantial unfairness to parties whose investment has been only to file an initial application, creating now and in the future an auction revenue stream that will impact the federal budget process.

Thank you for your consideration.

Sincerely,

Gene A. Bechtel

Counsel for Susan M. Bechtel

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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

January 9, 1997

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Dear Chairman Hundt:

In 1993 the United States Court of Appeals for the D.C. Circuit invalidated one of the principal comparative criteria used in assigning new television and radio licenses. You noted this fact in your recently-released statement, "The Hard Road Ahead -- An Agenda for the FCC in 1997," and you proposed several possible alternatives that the Commission might use in its selection process instead, including the remaining comparative criteria, programming proposals, lotteries, and auctions. You further stated that, in the absence of legislation authorizing the Commission to assign broadcast licenses by auction, the Commission would be required to select from among the remaining alternatives.

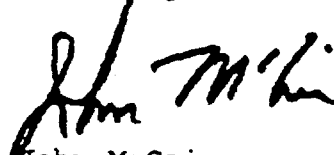
I am writing to request that the Commission take no action on new rules until Congress considers legislation, which I intend to introduce in the near future, that will authorize the Commission to auction these licenses.

In my judgment it would be unconscionable for the Commission to give away new television and radio licenses without a guarantee that the public would receive the benefits to which it is entitled for use of its property. It would be particularly unfortunate if the Commission were to reverse earlier decisions and decide to distribute these licenses either by lottery or on the basis of programming proposals. Lotteries have proven to be an indefensible way to assign spectrum, and programming proposals have been found to lead to very difficult enforcement issues if the licensee's programming performance fails to meet its prior promises.

The Honorable Reed E. Hundt  
January 9, 1997  
page 2

The legislation I will introduce shortly will give the Commission the authority to use auctions to assign licenses formerly assigned through the comparative hearing process. The Commerce Committee will hold hearings on this legislation within the next few months. Given the fact that similar legislation was passed by both Houses of Congress in the Balanced Budget Act of 1995, vetoed for other reasons by the President, I expect this legislation to move quickly. Therefore, although I understand that a number of applications will remain pending in the interim, I do not believe this interim period will add significantly to the length of time this matter has already been before the Commission for consideration. I therefore hope that the Commission will take no action on new rules until Congress votes on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "John McCain", written in a cursive style.

John McCain  
Chairman

JM:pbs

cc: The Honorable James H. Quello  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness

EX-100-100000

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Via Facsimile  
202-224-1651

The Hon. Paul Sarbanes  
United States Senate  
Washington, D. C.

BOOKED FILED JUL 17 1997  
FEDERAL BUREAU OF INVESTIGATION  
DEPARTMENT OF JUSTICE

Dear Senator Sarbanes:

My wife, Susan, and I are residents of Maryland, in my case since 1958, in her case, lifelong. We reside at 9312 Wooden Bridge Road in Potomac, Maryland, telephone 301-340-9424. We are writing concerning the matter of raising federal funds by the auction of broadcast frequencies that is currently before the Communications Committee headed by Senator McCain.

This letter relates to unfair, retroactive use of auctions to assign 20 or fewer FCC radio licenses that would wipe out many years of litigation efforts by a small number of citizens, resulting in no appreciable impact on federal revenues. This letter does not relate to nationwide auctioning of TV spectrum to be replaced by digital television frequencies, auctioning radio and television licenses in several hundred pending cases which have never been set for hearing, or any such cases that arise in the future.

An example of the 20 or fewer "old" broadcast licensing cases is that for a new FM station licensed to the community of Selbyville, Delaware, and serving the nearby Ocean City, Maryland area, for which Susan Bechtel and others filed competing applications nearly eleven years ago in September 1986. Hearings and related litigation continued until 1994, when the case was frozen until the FCC revised its comparative standards under court order.<sup>1</sup> That freeze remains in effect more than three

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The Hon. Paul Sarbanes  
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Item (1) will serve to clear out 20 or fewer old cases, on

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Thank you for your consideration.

Sincerely,

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Counsel for Susan M. Bechtel



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COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

January 9, 1997

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Dear Chairman Hundt:

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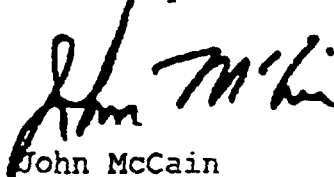
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The Honorable Reed E. Hundt  
January 9, 1997  
page 2

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Chairman

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cc: The Honorable James H. Quello  
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The Honorable Susan Ness

EX-100

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The Hon. Barbara Mikulski  
United States Senate  
Washington, D. C.

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OFFICE OF THE ATTORNEY GENERAL

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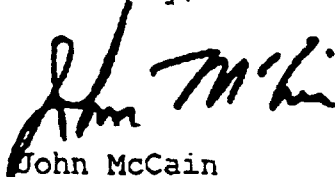
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January 9, 1997  
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John McCain  
Chairman

JM:pbs

cc: The Honorable James H. Quello  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness

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To: James J. Freeman, Esq.  
David E. Honig, Esq.  
Lawrence N. Cohn, Esq.  
John P. Bankson, Jr., Esq.

FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

James Shook, Esq., Suite 8202, 2025 M Street  
Norman Goldstein, Esq., Suite 8210, 2025 M Street  
John I. Riffer, Esq., Suite 610, 1919 M Street

Cc: Don Owen, NTW, Inc.

From: Gene Bechtel

I am enclosing letters to Senator Breaux and Congressman Tauzin on behalf of NTW, Inc., one of the applicants in MM Docket No. 88-524 relative to a new FM station at Shreveport, Louisiana. The letters followed shortly after telephone conversations by Mr. Owen, a principal of NTW, Inc., with Senator Breaux and Congressman Tauzin (or their staff) and it is anticipated that Mr. Owen, Ms. Farhat and/or I may have further telephone conversations, all relating to the subjects and tenor of the letters, none relating to the merits of the comparative cases.

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Via Telecopier: (202) 225-0563

The Hon. Billy Tauzin  
Chairman, Telecommunications Subcommittee  
House of Representatives  
Washington, DC 20515

ATTN: Emily Shaw, Chief of Staff

Dear Representative:

This relates to unfair, retroactive use of auctions to assign 20 or fewer FCC radio licenses that would wipe out many years of litigation investments by a small number of investors, resulting in no appreciable impact on federal budget revenues. This does not relate to auctioning TV spectrum to be replaced by high definition television frequencies, auctioning radio and television licenses in several hundred pending cases which have never been set for hearing, or any such cases that arise in the future.

An example of the 20 or fewer "old" broadcast licensing cases is that for a new FM radio station in Shreveport, Louisiana, for which NTW, Inc. and others filed competing applications ten years ago, in 1987. Hearings and related litigation continued until 1994, when the case was frozen until the FCC revised its comparative standards under court order. That freeze remains in effect. In 1995 the Shreveport parties agreed to a settlement of the case. Those settlement papers still remain pending before the FCC in 1997. It would be unconscionable to apply a new auction mechanism to this FM license, depriving the parties of the fruits of a decade of litigation and taking the assets and property which they have invested in the legal and other costs of that litigation.

Enclosed is a letter to the FCC from the Honorable John McCain, asking the Commission to withhold action on revised comparative policies pending auction legislation. The Senate Communications Subcommittee staff advise that the bill (presumably to be sponsored by Senator McCain) will be introduced shortly providing for auctions of all new broadcast license cases, including the small handful of 20

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The Hon. Billy Tauzin

June 9, 1997

Page 2 \_\_\_\_\_/

or fewer "old" litigation cases illustrated by the Shreveport case. These actions appear to have dissuaded the FCC both from acting on settlement of the old litigation cases and from adopting revised comparative policies for these and all other pending and future cases.

The interests of the nation and its citizens will be served by the following:

1. A communication from Senator McCain to the FCC encouraging the agency aggressively to initiate and approve settlements of all broadcast licensing cases that were designated for hearing prior to 1997 (or other suitable current date). We are not asking for any action to be initiated by the Senator addressing the specific merits of the Shreveport settlement, which is a "restricted" proceeding subject to the Commission's "ex parte" rules.

2. Application of the auction mechanism (if that is the will of Congress and the administration) to broadcast licensing cases which have not been designated for hearing by the current date specified in (1) above, and to all broadcast licensing cases in the future.

Item (1) will serve to clear out 20 or fewer old cases, avoiding the need to adopt revised comparative policies, in fairness to the citizens who are parties, without losing any significant amount of auction revenues for the Treasury. Item (2) will apply to several hundred pending licensing cases not designated for hearing, plus new cases in the future, causing no substantial unfairness to parties whose investment has been only to file an initial application, creating now and in the future an auction revenue stream that will impact the federal budget process.

Sincerely,

*Gene A. Bechtel /af*

Gene A. Bechtel  
Counsel for NTW, Inc.

ENC:

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GENE A. BEGTEL

June 9, 1997

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COESLAW@EROLS.COM

Via Telecopier: (202) 228-2577

The Honorable John Breaux  
Member of Congress  
516 Hart Building  
Washington, DC 20510

ATTN: Mr. Tommy Hudson

Dear Senator Breaux:

This relates to unfair, retroactive use of auctions to assign 20 or fewer FCC radio licenses that would wipe out many years of litigation investments by a small number of investors, resulting in no appreciable impact on federal budget revenues. This does not relate to auctioning TV spectrum to be replaced by high definition television frequencies, auctioning radio and television licenses in several hundred pending cases which have never been set for hearing, or any such cases that arise in the future.

An example of the 20 or fewer "old" broadcast licensing cases is that for a new FM radio station in Shreveport, Louisiana, for which NTW, Inc. and others filed competing applications ten years ago, in 1987. Hearings and related litigation continued until 1994, when the case was frozen until the FCC revised its comparative standards under court order. That freeze remains in effect. In 1995 the Shreveport parties agreed to a settlement of the case. Those settlement papers still remain pending before the FCC in 1997. It would be unconscionable to apply a new auction mechanism to this FM license, depriving the parties of the fruits of a decade of litigation and taking the assets and property which they have invested in the legal and other costs of that litigation.

Enclosed is a letter to the FCC from the Honorable John McCain, asking the Commission to withhold action on revised comparative policies pending auction legislation. The Senate Communications Subcommittee staff advise that the bill (presumably to be sponsored by Senator McCain) will be introduced shortly providing for auctions of all new broadcast license cases, including the small handful of 20

BECHTEL & COLE

CHARTERED

The Hon. John Breaux

June 9, 1997

Page 2 \_\_\_\_\_/

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Sincerely,

*Gene A. Bechtel/auf*

Gene A. Bechtel  
Counsel for NTW, Inc.

ENC:

JOHN MCCAIN, ARIZONA, CHAIRMAN

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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

January 9, 1997

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Dear Chairman Hundt:

In 1993 the United States Court of Appeals for the D.C. Circuit invalidated one of the principal comparative criteria used in assigning new television and radio licenses. You noted this fact in your recently-released statement, "The Hard Road Ahead -- An Agenda for the FCC in 1997," and you proposed several possible alternatives that the Commission might use in its selection process instead, including the remaining comparative criteria, programming proposals, lotteries, and auctions. You further stated that, in the absence of legislation authorizing the Commission to assign broadcast licenses by auction, the Commission would be required to select from among the remaining alternatives.

I am writing to request that the Commission take no action on new rules until Congress considers legislation, which I intend to introduce in the near future, that will authorize the Commission to auction these licenses.

In my judgment it would be unconscionable for the Commission to give away new television and radio licenses without a guarantee that the public would receive the benefits to which it is entitled for use of its property. It would be particularly unfortunate if the Commission were to reverse earlier decisions and decide to distribute these licenses either by lottery or on the basis of programming proposals. Lotteries have proven to be an indefensible way to assign spectrum, and programming proposals have been found to lead to very difficult enforcement issues if the licensee's programming performance fails to meet its prior promises.

The Honorable Reed E. Hundt  
January 9, 1997  
page 2

The legislation I will introduce shortly will give the Commission the authority to use auctions to assign licenses formerly assigned through the comparative hearing process. The Commerce Committee will hold hearings on this legislation within the next few months. Given the fact that similar legislation was passed by both Houses of Congress in the Balanced Budget Act of 1995, vetoed for other reasons by the President, I expect this legislation to move quickly. Therefore, although I understand that a number of applications will remain pending in the interim, I do not believe this interim period will add significantly to the length of time this matter has already been before the Commission for consideration. I therefore hope that the Commission will take no action on new rules until Congress votes on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "John McCain", written in a cursive style.

John McCain  
Chairman

JM:pbs

cc: The Honorable James H. Quello  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness

EX-100-100000

92-52

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July 8, 1997

Via Facsimile  
202-224-1651

The Hon. Paul Sarbanes  
United States Senate  
Washington, D.C.

RECEIVED

JUL 31 1997

FEDERAL BUREAU OF INVESTIGATION  
OFFICE OF THE ATTORNEY GENERAL

Dear Senator Sarbanes:

My wife, Susan, and I are residents of Maryland, in my case since 1958, in her case lifelong. We reside at 9312 Wooden Bridge Road in Potomac, Maryland. On June 13, 1997 we wrote concerning a matter which has now come to a head before the Conference Committee relative to budget legislation which is the subject of the enclosed summary sheet. Susan is one of the applicants for the FM frequency in the Ocean City area referred to in the last ¶ of the summary.

For reasons stated in our earlier letter and in the summary sheet, we ask you or your staff to contact the Senate members of the Conference Committee, who were announced a short time ago, i.e., Senators McCain, Hollings and Stevens, or their staff or the Commerce Subcommittee staff as may be the most appropriate. Time is of the essence. The manager of the Conference Committee on the House side, representative Tauzin, has indicated that the Conference Committee intends to resolve the issue in question before this week is out.

Please feel free to give me a call if you or your staff have any questions.

Sincerely,

Gene A. Bechtel

No. of Copies rec'd  
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July 8, 1997

Via Facsimile  
202-224-8858

The Hon. Barbara Mikulski  
United States Senate  
Washington, D.C.

Dear Senator Mikulski:

My wife, Susan, and I are residents of Maryland, in my case since 1958, in her case lifelong. We reside at 9312 Wooden Bridge Road in Potomac, Maryland. On June 13, 1997 we wrote concerning a matter which has now come to a head before the Conference Committee relative to budget legislation which is the subject of the enclosed summary sheet. Susan is one of the applicants for the FM frequency in the Ocean City area referred to in the last ¶ of the summary.

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Please feel free to give me a call if you or your staff have any questions.

Sincerely,

Gene A. Bechtel



## Spectrum Auction Legislation

The Budget Reconciliation Act is before the Conference Committee and scheduled to act as early as Wednesday, July 9th, on:

HR-2015, Section 3301, as passed by the House, and S-6308, Section 3001, as passed by the Senate, regarding auctions of radio and TV spectrum by the FCC to raise funds for the balanced budget program.

Auctions of frequencies the subject of recent applications and all future applications are OK. Both bills direct the FCC to auction radio and TV station frequencies in the future including several hundred frequencies for which applications were recently filed at the FCC but have not been processed. There is no concern over these frequencies, which together with all future applications for such frequencies, contribute virtually all of the budget revenue that could ever be obtained from this source.

A small handful of frequencies for which citizens filed applications a decade or more ago and which have been in litigation should not be taken by legislative fiat and should be exempt from auctions, as provided in the House Bill. HR-2015 grandfathers about 20 frequencies which have been the subject of years of litigation at the FCC and in the courts (a) in fairness to the citizens who invested funds in that litigation who would lose their investment by legislative fiat if the new auction legislation terminated their cases and opened the frequencies for auction and (b) because to grandfather these few frequencies would not materially impact the balanced budget program.

The Conference Committee should reject the provisions in the Senate bill and adopt the provisions in the House bill. S-6308 leaves to the FCC the decision of whether to exempt these 20 cases or go ahead with auctions of their frequencies. In effect, this will result in auctions because FCC Chairman Hundt has a record of pushing auctions at every turn and has said the FCC does not want to go back to comparative hearing proceedings, even in these few 20 cases.

Example of litigation which has been ongoing for many years. One case in point...three parties applied for an FM radio frequency in the Ocean City, Maryland, area 11 years ago in 1986. The case has been in controversy ever since in hearings at the FCC, with two court appeals and two remands to the agency, the latter which held one criterion in comparative proceedings unlawful and directed the FCC to correct that criterion, and, for the past nearly four years since February 1994, a freeze on this litigation and the other approximately 19 similarly situated frequencies in litigation without any agency action whatever.